IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.54 of 1994
Date of decision:26.10.2006

The Commissioner of Income Tax, Patiala

....Petitioner

versus

M/s Shivalik Agro Chemicals, Chandigarh

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the revenue.
Mr. Suvir Sehgal, Advocate, for the respondent.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 24.2.1993 in ITA No.728 of 1987, for the assessment year 1983-84:-

> "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in confirming the order of the CIT(A) deleting the addition of Rs.3,06,123/- made on account of unexplained investment in the construction of factory building?"

Relevant facts may be noticed from the statement of case, which are as under:-

> "3.The assessee constructed factory building. The construction had been done during the period 1975-76 to 1982-83. The assessee filed a report of the registered valuer engaged by him whereas the Assessing Officer proceeded to adopt the cost as fixed by the DVO. An addition was consequently made by the Assessing Officer to the tune of Rs.3,06,123/-. This amount represented the difference between the cost of construction estimated by the DVO and the cost shown by the assessee. The assessee had contended that the report of the registered valuer must be accepted as it contained all the necessary details regarding

construction. It was also pleaded that the rates of construction were different in each of the years 1975-76 to 1982-83.

4. The first appellate authority found force in the assessee's contentions and deleted the addition. The Tribunal also agreed with the assessee's arguments and found that the cost of construction shown by the assessee was to be accepted. There was some dispute about a shed which was claimed to have been completed after 31.3.1982 at a cost of Rs.1,52,365/-. The cost of construction of this shed was claimed to be not includible in the total cost. The assessee had shown the cost of construction of the factory building at Rs.12,13,005/- against the cost determined by the departmental valuer at Rs.17,75,500/-. The assessee had shown the cost every year with reference to the progress of the work. The assessee was a registered firm and maintained books of accounts. The assessee derived income from manufacture and sale of insecticides and pesticides. Since the details were found incorporated in the books of the assessee, the cost of construction, as recorded, were found to be acceptable. There was no definite material to reject the book version and the registered valuer's report was also found to be reliable. Therefore, the Tribunal declined to interfere with the deletion of the addition made by the first appellate authority."

We have heard learned counsel for the parties and perused the record.

We have perused judgment of the Allahabad High Court in **CIT v. Sheikhar Chand and Sons,** (1990) 186 ITR 269. We are of the view that finding of the Tribunal that investment in the construction of factory building was duly explained, was a pure finding of fact.

No question of law arises.

In view of the above, the question is returned unanswered.

(Adarsh Kumar Goel)
Judge

October 26, 2006 (Rajesh Bindal)
'gs' Judge